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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

Milwaukee Enrollment Services, Petitioner

DECISION

v.

[REDACTED], Respondent

FOF/155477

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 14, 2014, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Milwaukee Enrollment Services to disqualify [REDACTED] from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on April 7, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Respondent committed an Intentional Program Violation (IPV).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

Department of Health Services  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Katherine May, HSPC Sr.  
Milwaukee Enrollment Services  
1220 W. Vliet St., Room 106  
Milwaukee, WI 53205

**Respondent:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who received FoodShare benefits between April 2011 and January 2013. (Exhibit 1, pgs. 8-9)

2. On January 31, 2011, August 12, 2011 and again on August 7, 2012, the Respondent electronically signed ACCESS applications indicating, "I understand the penalties for giving false information or breaking the rules." (Exhibit 1, pgs. 18-20)
3. The owner of [REDACTED] was no longer a subcontractor distributing seafood and meat, at the time he became an authorized SNAP vendor in August 2010. Instead, he purchased FoodShare benefits for cash, paying the benefit recipients only a percentage of the face value of the card. The recipients did not receive any food items. (Exhibit 1, pgs. 28-30)
4. FoodShare disbursements were made to the Respondent on the 5<sup>th</sup> of the month, except in September 2011, when the disbursement was made on September 7, 2011 and in March 2012, when the disbursement was made on March 12, 2012. (Exhibit 1, pgs. 8-9)
5. The Respondent's EBT card was used to redeem \$2,850 in benefits with [REDACTED] between April 2011 and January 2013, over the course of 17 transactions, all of which were completed using a card ending in 7524. (Exhibit 1, pgs. 31-33)
6. On February 17, 2011, the agency issued to the Respondent an EBT card ending in [REDACTED] which the Respondent continued to use through July 2013. (Exhibit 1, pgs. 32-33)
7. On February 26, 2014, the Office of Inspector General issued to the Respondent an Administrative Disqualification Hearing Notice alleging that the Respondent trafficked FoodShare benefits, in the amount of \$ 2,850.00, between April 2011 and January 2013. (Exhibit 1, pg. 5)

## DISCUSSION

### *Respondent's Non-appearance*

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. *Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.* If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, *the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

*Emphasis added*

The hearing in this case took place on April 7, 2013. The Respondent was advised of the date and time of the hearing, in an Administrative Disqualification Hearing Notice that was sent to him at [REDACTED] [REDACTED]. Ms. Mays indicated that this was the Respondent's last known address (See also Exhibit 1, pg. 3). Ms. Mays further indicated that the agency did not receive any returned mail.

The Respondent did not appear at the hearing and the Respondent did not contact the Division of Hearings and Appeals within 10 days to explain his failure to appear. As such, it is found that the Respondent did not have good cause for his non-appearance.

*The Merits of OIG's Claim*

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. Makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. Commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 49.795(2-7).

Wisconsin statutes prohibit the intentional exchange of FS benefits for cash. The law specifically provides that,

No eligible person may knowingly transfer food coupons except to purchase food from a supplier or knowingly obtain food coupons or use food coupons for which the person's household is not eligible.

Wis. Stat. § 49.795(4); *see also*, 7 C.F.R. § 271.5(b).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. The respondent did not appear or claim a good cause reason for not attending the hearing. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear,

satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the opposite is true.

In the case at hand, Milwaukee Enrollment Services has established, by clear and convincing evidence, that the Respondent was selling his FoodShare benefits. First, the Respondent’s EBT card was used to redeem \$2,850 in benefits with [REDACTED] between April 2011 and January 2013, over the course of 17 transactions. (Exhibit 2, pg. 31) Second, the transactions were all for \$100, \$150 or \$200. (Id.) Third, during this time, [REDACTED] was no longer distributing meat and seafood; but was instead purchasing EBT benefits for a fraction of face value. (Exhibit 1, pgs. 24-26) As such, the Respondent had to have been selling his benefits.

Based upon the foregoing, it is found that the Respondent was trafficking his FoodShare benefits between April 2011 and January 2013.

There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). There is nothing in the record to rebut the presumption that the Respondent intentionally sold his benefits to [REDACTED].

### **CONCLUSIONS OF LAW**

The Respondent committed an intentional program violation (IPV) by trafficking his benefits with [REDACTED] between April 9, 2011 and January 8, 2013.

**THEREFORE, it is**

**ORDERED**

That the IPV for claim number [REDACTED] is sustained and that the Respondent is hereby ineligible to participate in the FoodShare program for a period of one year, effective the first month following the date of receipt of this decision.

**REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO  
APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

**APPEAL TO COURT**

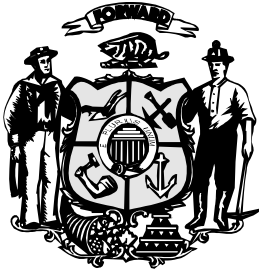
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of April, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 22, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability